Supreme Court, U. S.
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IN THE

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

No. 75-1533

MARGARET CANADA,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

## REPLY TO GOVERNMENT'S BRIEF IN OPPOSITION

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## CORRECTED STATEMENT OF FACTS

Petitioner does not agree that the government's statement of facts is undisputed. (Gov. 2) Aside from the fact that several material facts are incorrectly stated, a newer statement of facts now exists, consisting of numerous material differences.[1] At the second evidentiary hearing, the relevant material facts were related as follows:

### THERESA THOMAS

Ms. Thomas, the security officer who opened the green suitcase at the checkpoint, testified that she did not see

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[1] On July 19 and 20, 1976, a new evidentiary hearing was conducted concerning the same set of facts. The transcripts of said hearing are being duplicated for the benefit of the court and opposing counsel. (See *U.S.A.* v. *Stephanie Maria Gurley, et al.*, Docket Number 76-0284).

either the male or female place the green suitcase on the conveyor belt before it passed through the x-ray machine. (2ET. 14, 44, 63) [2]

That when she read the x-ray screen, there was a solid mass in *part* of the suitcase. (2ET. 15) She could not identify the black male, however, she identified a singled-out mug photo of the black female. (2ET. 18)

That she told the persons waiting for the bag that she had to open it. (2ET. 18, 53) She was never given permission to open the bag. (2ET. 53 & 54)

That she opened the bag within five (5) seconds, which included a statement by the black male, "Why, there's nothing in it." Then an explanation from her, afterwhich the bag was immediately opened. (2ET. 54-55) She did not advise that the passenger had the right to leave from the boarding area if he did not want the bag opened. (2 ET. 58)

On direct examination, Thomas testified that she had waited a few minutes before opening the suitcase. (2ET. 19)

That when she opened up the brown paper bag, she saw stacks of money in $20 and $10 denominations. This observation was made in a fleeting glance, as she never touched the money. (2ET. 20, 46, 50) She could not remember that she had testified on a prior occasion that the denominations of money observed were $50 and $20 bills. (2ET. 47, 50 & 51)

That she turned around and went back down the concourse where she met S/A Markonni. She described the woman and told him where the black male was standing. Thereupon, Markonni advised her to go back to her checkpoint. (2ET. 22, 64)

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[2] "2ET" Refers to transcript references of the second evidentiary hearing.



That in addition to the rewards received for supplying information to S/A Markonni, he has taken her out on a social date. (2ET. 34, 67) That the size of the reward depended upon the quantity of money reported. (2ET. 35) She had been paid money 4-5 times before the CANADA case of varying denominations. (2ET. 40)

That although eight (8) people were working with her February 16, 1975, she could only remember the names of two. (2ET. 41, 57)

That when she opened the bag and felt the brown paper sack, she could tell it was not a bomb or weapon. (2ET. 52, 56)

That she did not always report every large sum of money observed going through the checkpoint. (2ET. 59-60) She personally decided which ones to report.

That she had testified April 14, 1975, that a black female was enroute to the ticket counter during the conversation with the black male. (2ET. 61)

She had never been instructed by her employer to obtain the names of passengers and turn over to the DEA. (2ET. 65) She never saw the passenger's ticket or a copy thereof. (2ET. 66)

## S/A PAUL MARKONNI

That he met Ms. Thomas walking up toward the security checkpoint. (2ET. 30) [3] Thomas gave him a description of a black female, but he did not see said person. (2ET. 34)

On cross examination, S/A Markonni could not recall the name of the officer with the Detroit Narcotic Bureau that allegedly informed him that Richard Kendricks was

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[3] S/A Markonni's testimony may be found in Volume II of the Second Evidentiary Hearing Transcript.

in jail on a narcotics offense, although he (Markonni) had taken the person's name down at the time the information was given. (2ET. 41) That he was not informed of the period of incarceration or the specific offense. (2ET. 42-44) That Margaret Canada was not of record with the DEA. (2ET. 44) Acknowledged that he had previously testified incorrectly that he knew the identity of Margaret Canada before her arrest. (2ET. 45)

Markonni could not remember having told S/A Perkins that Boyer Bracy had been arrested for a narcotics offense in 1968, however, he acknowledged that he had so testified in prior testimony April 14, 1975. (2ET. 47-49)

Defense counsel, at this point, was allowed to make an offer of proof, wherein, it was represented that an in court demonstration with an x-ray machine would disclose that Ms. Thomas' testimony of the image appearing on the x-ray screen February 16, 1975 was false. (2ET. 58)

Markonni further testified that although he knew of Richard and Juanita Kendricks, he had no prior knowledge of Boyer Bracy before February 17, 1975. (2ET. 124-125) That Bracy had filed a complaint against him claiming that he was being illegally harassed everytime he went to the airport and he would like to see Bracy in jail. (2ET. 126-129)

**RICHARD PERKINS**

Agent Perkins testified that S/A Markonni could not identify Boyer Bracy as late as 10 PM April 30, 1975. (2ET. 177, 180-181)

That he did not specifically ask Anne Welsh for permission to search the green suitcase. (2ET.190)

That S/A Markonni had informed him that Margaret Canada had been observed in the 1975 Corvette with Boyer Bracy before entry of the airport and Markonni had had



the vehicle stopped by a field unit for investigation. (2ET. 192) That when the security officer opened the green suitcase, she observed some currency and written on a separate piece of paper, the figure 68,000. That the brown paper bag was situated in the top portion of the suitcase and the currency observed was in denominations of $100, $50, $20 and $10. (2ET. 192-194)

That he spoke with AUSA Stephen Peterson between 1:40 PM and 3 PM, relating the details of activity up to that point. Peterson advised that there was reasonable cause to pursue the matter further and question the individuals about their activities, but was not told that there was probable cause to make an arrest. (2ET. 195) That although AUSA Peterson advised that the subjects could be detained and questioned upon return to the hotel, this was not done. He (Perkins) did not feel that there was reasonable cause to contact CANADA upon her return to the hotel. (2ET. 196-197)

That his case notes did not reflect an observation of the contour of the yellow duffel bag when the same was taken from the trunk of the car and carried into the hotel room about 4:10 PM on February 17, 1975.[4] (2ET. 198) That he had no real knowledge when the questioned vehicle returned from Mexico. (2ET. 199)

Before speaking with Ms. Welsh, he did not advise her of her constitutional rights. He received consent to search the vehicle himself. However, Agent McCoy actually made the search. (2ET. 200)

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[4] During trial in *U.S.A.* v. *Boyer Bracy, et al.*, Docket No. 76-0284, a demonstration with the yellow duffel bag was conducted. It was observed that the bag has a supporting strap around the entire center. All narcotics received in *U.S.A.* v. *Margaret Canada, et al.*, Docket No. 75-0337 were placed inside the bag and fastened as the officer said he observed. There was no drop in the bottom of the bag nor sag in the sides nor "V" shaped contour.

He had no idea of the weight of the object inside the bag, but acknowledged that any item of similar weight could have caused the same appearance he observed of the yellow duffel bag at 4:10 PM on February 17, 1975. (2ET. 203)

**ANNE BELLE WELSH**

The court received as evidence her testimony of April 14, 1975.

**BOYER BRACY**

Boyer Bracy testified that he was 16 years old in 1968 and as of July 21, 1976, he had never been arrested and convicted of a felony. (2ET. 257)

That he and Margaret Canada were just friends. That CANADA called him about 4 PM on February 16, 1975 and asked him to drive her to the airport. (2ET. 258) That CANADA was holding a suitcase in her lap on the way to the airport, because the car they drove in did not have a large enough trunk to hold it. CANADA took the luggage inside the terminal and placed it on the conveyor belt. He had no knowledge of the contents thereof. (2 ET. 259)

That the x-ray screen was not facing Ms. Thomas. That persons behind the conveyor belt could not possibly see the x-ray screen. (2ET. 261-262)

That CANADA put suitcase on conveyor belt. That he went to the side of the table to wait for the bag to come through. Then, CANADA went on to purchase her ticket, as he continued to wait for the bag. (2ET. 262-263)



That Ms. Thomas was not the person assigned to view the x-ray screen. (2ET. 263)

That when the suitcase landed on the table from the conveyor belt, Ms. Thomas folded it down and said she had to open it and he inquired, "why?" That Thomas said she had to open it because of something that came up on the x-ray machine. That he said, "no." That Thomas just went on and opened the suitcase immediately. (2ET. 264-265) No permission was ever given, as he did not feel he had that authority.

That Ms. Thomas opened up the brown paper bag, looked in it about 2 seconds and closed it up. (2ET. 266-267) That CANADA was gone to purchase her ticket and he made no statement to her in the presence of Ms. Thomas. That he (Bracy) handed the luggage to an airlines service agent.

**ARGUMENTS**

1. Government counsel's argument as to consent to open and search the suitcase at the airport is clearly inappropriate, in view of the new facts disclosed as well as the existing facts before the Court of Appeals.

The security officer has recently testified that she did not see who placed the suitcase on the conveyor belt. (2ET. 14, 44, 63) Accordingly, the uncontradicted testimony of Mr. Bracy that possession of the suitcase at all times, before it was opened, rested with Petitioner CANADA, is dispositive of that fact. So that, assuming arguendo, CANADA was standing at the table before the suitcase was opened, consent, of necessity, must be obtained from her. As pointed out in the testimony of Bracy, he advised the officer not

to open the suitcase, because he did not possess authority to authorize its opening.

Moreover, the question of consent to search that perplexed the Court of Appeals has now been resolved in new testimony. Ms. Thomas unequivocally acknowledges that no consent or permission to open the suitcase was granted by anyone. (2ET. 53-54) That she went ahead and opened the suitcase within a period of five (5) second, which included the period of time she and the black male conversed back and forth.

We submit that the numerous discrepancies in the new testimony of Ms. Thomas against that of her first testimony on the decisive facts supporting probable cause, in this case, required at a minimum, a fresh determination of the suppression issue. *Rouse* v. *United States,* 359 F. 2d 1014; *Jackson* v. *United States,* 353 F. 2d 862.

2. We agree with the government's assertion that the Petitioner or her companions voluntarily supplied telephone information to hotel personnel. However, there was no consent that said information be divulged to anyone else. The very essence of the protection of privacy interests is the right to conceal that which the possessor of the right does not wish others to know.

There is no implied consent built into the relationship between hotel guest and its employees to disclose confidential information to police. *Stoner* v. *California,* 376 U.S. 490 (1964)

The government's argument that petitioner has no standing to complain about this infraction is clearly misplaced. *Stoner,* supra; *Jones* v. *United States,* 362 U.S. 357, 366.



3. The government's argument as to the search of the green suitcase disregards several material facts.

First, the officer apparently did not feel that he had probable cause to arrest and search. In recent testimony, Officer Perkins related that he had spoken with AUSA Peterson as late as 3 PM relating all of the facts and details known about the investigation at that time. Mr. Peterson advised him that there was reason to pursue the investigation, but did not advise that there was probable cause to arrest. (2ET. 195) He further testified that *he* (Perkins) did not feel that reasonable cause existed to even make contact with petitioner as late as 3:10 PM. (2ET. 196-197)

Moreover, his detailed report of known facts of the case, when his memory was most fresh, did not reflect any unusual contour of the yellow duffel bag when Turner and Welsh returned to the hotel at 4:10 PM. Also, an incourt demonstration of the contraband seized being placed inside the bag and fastened as Perkins described, revealed no noticeable or unusual shape of the bag which would in any way reflect that an unusual amount of weight would have been concentrated in any particular part of the bag.

Further, it is very unlikely that the officer would seek consent to search, had be believed he had a right to search. *Herter* v. *United States,* 27 F. 2d 521; *Farris* v. *United States,* 24 F. 2d 639. There existed no more probable cause to search out on the highway than when petitioner and her companions left the hotel.

Second, Welsh's consent could not bind petitioner any more than the consent of the owner of an apartment building to search every individual tenant's apartment in their presence. *People* v. *Madow,* 303 N.Y.S. 2d 974; *Piazzola* v. *Watkins,* 442 F.2d 284; *People* v. *Flowers,* 179 N.W. 2d 56.

There is no evidence, in the record, that Ms. Welsh ever maintained possession or control of the green suitcase. She testified that she did not. Moreover, by the officer's testimony, she said, "go ahead, I don't care," which clearly limits her concern to her personal possessions.

The government always claimed that the green suitcase belonged to petitioner. That it was always in either her possession or Turner's. Accordingly, since she was physically present, any consent to search the green suitcase must flow from petitioner or Turner. Cases cited by the government are not applicable to the instant facts.

Third, since the new testimony of all of the relevant witnesses on the facts supporting the alleged probable cause, which the Appellate Court found, are ladden with material inconsistencies, a fresh determination of the suppression issue is clearly warranted. *Rouse* and *Jackson,* supra; *United States* v. *Upshaw*, 448 F. 2d 1218, 1222; *Whiteley* v. *Warden,* 401 U.S. 561.

4. Government counsel has clearly misstated our contention. The sureties on the bond were clearly identified. On one occasion, petitioner's parents and Mrs. Juanita Kendricks offered to pledge five (5) parcels of property to secure the bond. Then, a bonding company with adequate insurance backing offered to post the bond. Both offers were denied. An inquiry beyond these resources was clearly a thin veiled cloak to thwart the purpose of bail, because the court is going beyond assurance that a forfeiture would be paid upon failure of a defendant to appear.

Moreover, the danger of allowing courts to employ speculative concern about the safety of an accused or the motives of persons offering assistance creates a tool for punitive detention and a denial of the right to be released on



reasonable bail. Obviously, detention does not guarantee that an accused will live to appear for trial.

The record is abundantly clear why the court denied bail pre-trial.

5. Government counsel's argument that it is unlikely that one of the main government witness' acquaintance with one of the jurors, discovered for the first time during trial, influenced the outcome of the trial. But we contend that the likelihood that it might have is sufficient reason for a new trial, especially in view of the juror's concealment of that fact. *United States* v. *Basurto,* 497 F. 2d 781; *Mooney* v. *Holohan,* 294 U.S. 103.

Most stunning is the fact that excusing that juror could in no way have prejudiced the government or the defendant.

6. Contrary to the government's argument, the sum of $68,000 was never proven to be the amount of money contained in the green suitcase. Yet, the court's reference to that amount laid the groundwork for the government to later argue that that was a sufficient amount to purchase the quantity of drugs found in the green suitcase. Accordingly, the court's comment made apparent to the jury a fact that the prosecution could not prove.

7. To understand the basis of the court's sentencing of the petitioner, an examination of all relevant records is necessary, including the criminal records of the co-defendants and the sentences they received, as well as the compassionate plea of Rev. S. L. Roberson, petitioner's minister, who traveled 2,200 miles to be by her side for sentencing. Moreover, government counsel overlooks the fact that the trial judge expressed a willingness to sentence

petitioner to 30 years imprisonment if that would force her to cooperate with the prosecution, in total disregard for any mitigating facts that might make a more lenient sentence warranted.

## CONCLUSION

It is therefore respectfully requested that the Petition for Certiorari be granted.

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